

<p>1 Dawley 201</p> <p>2 Shron.</p> <p>3 Q Did they suggest to you that this 4 journal entry and adjustments be accepted by Dalton?</p> <p>5 A What do you mean suggest?</p> <p>6 Q Well, they were the auditors, right?</p> <p>7 A That's correct.</p> <p>8 Q They looked at your general ledger report of \$108,000.00 for 2006, is that correct?</p> <p>9 A Yes.</p> <p>10 Q Is it fair to say then that they suggested to you that the \$108,000.00 be reclassified as to \$82,000.00 and that the report to DHCR show \$34,000.00?</p> <p>11 MR. TRAUB: Objection to form.</p> <p>12 A The \$34,000.00 was the retainer that we paid out for the audit. The other items were not for the audit and shouldn't have -- should not appear under audit expenses. They should appear under the proper classification. They were for taxes and a</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 203</p> <p>2 as to what period in time those amounts were generated for.</p> <p>3 Q Is it fair to say that if someone at DHCR, had received that document reporting the \$34,000.00 that they might conclude that the only monies received by Marks, Paneth & Shron in 2006 was \$34,000.00?</p> <p>4 MR. TRAUB: Objection to the form.</p> <p>5 MR. KELLY: Objection to the form.</p> <p>6 A If you recall our representative for DHCR comes in a couple of times a year to review our financial information and looks at every check we generate. So they were well aware of how many checks we wrote and the amount that we wrote for Marks, Paneth & Shron. When they also come in they will ask us for a copy of our expenditures for a period in time, say the first six months of the year. We would generate the activity for those six months, which would show every category and expense for that six months. The form that they would have gotten would have been on a</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 202</p> <p>2 couple of various. I would have to look and see, but I would presume they were possibly for a rent increase that we had.</p> <p>3 Q They were for accrued monies, which had accumulated over several years, isn't it correct the \$82,000.00?</p> <p>4 MR. TRAUB: Objection to form.</p> <p>5 Q That wasn't money from one year that was accrued going backwards, I think you testified to 2001, is that correct?</p> <p>6 MR. TRAUB: Objection to form.</p> <p>7 MR. KELLY: Joined.</p> <p>8 A That's not what I said.</p> <p>9 Q Tell us please what you said.</p> <p>10 A I read off the description of the work that was done for prior years that was paid in the year 2006. If we had monies available we would have paid it currently. We wouldn't have accrued it for four or five years if we had funds available. I'd have to look at the invoices to see exactly what dates they were dated in order to give you an answer</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 204</p> <p>2 cash basis and would have shown for the first six months how much we paid Marks, Paneth & Shron without reclassification.</p> <p>3 Q Mr. Dawley, whenever there is a lot of accrued expense on any accounting going back several years, if you were auditing would that suggest to you the possibility that some of the sums accrued would need to be strongly verified before they were credited at face value?</p> <p>4 MR. KELLY: Objection to form.</p> <p>5 A If you'll note that the journal entry that was made for the \$82,000.00 was reclassified not from a payable from prior years. It was reclassified as an expense of the current year. That would indicate that it was an expense of that year, not prior years.</p> <p>6 Q Wouldn't that tend to reduce income to the partnership in 2006 if that reclassification was made and the deduction was taken all in one year? Under the accrual system it was probably deducted as an account payable in the previous year. I mean wouldn't</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 205</p> <p>2 there be some confusion there?</p> <p>3 MR. KELLY: Objection to</p> <p>4 form.</p> <p>5 MR. TRAUB: Objection to</p> <p>6 form.</p> <p>7 A No, no.</p> <p>8 If the amount was due to a prior</p> <p>9 year it would have been accrued and expensed</p> <p>10 in the prior year.</p> <p>11 Q Now, shouldn't this schedule</p> <p>12 report actual fees paid to Marks, Paneth &</p> <p>13 Shron and anybody else in that year in the</p> <p>14 given year, shouldn't the schedule show that?</p> <p>15 A Not that I am aware of.</p> <p>16 Q So the answer is no?</p> <p>17 A No.</p> <p>18 Q Whose responsibility is it</p> <p>19 eventually to do the financial statements?</p> <p>20 Whose responsibility is that; is that the</p> <p>21 auditor's responsibility or --</p> <p>22 A The auditors.</p> <p>23 MR. TRAUB: Objection to the</p> <p>24 form.</p> <p>25 MR. KELLY: Joined. LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 207</p> <p>2 with the form, in order to determine how we</p> <p>3 have to classify our item, because they are</p> <p>4 very specific.</p> <p>5 Q There is no question that the</p> <p>6 \$82,000.00 that is on that Exhibit is</p> <p>7 generated at least in part from invoice number</p> <p>8 103442, which bears the date August 28th of</p> <p>9 2002?</p> <p>10 A Where is the Exhibit?</p> <p>11 Q I am going to show you the bill.</p> <p>12 I am not going to mark it at this point if you</p> <p>13 agree that that money is coming from 2002.</p> <p>14 MR. TRAUB: Objection to the</p> <p>15 form.</p> <p>16 MR. KELLY: Joined.</p> <p>17 MR. TRAUB: I think we</p> <p>18 should mark this as an Exhibit.</p> <p>19 Q Let's get the witness's answer to</p> <p>20 the question?</p> <p>21 MR. TRAUB: Let's mark it as</p> <p>22 an Exhibit first.</p> <p>23 (Invoice number 103442 was</p> <p>24 marked as Plaintiff's</p> <p>25 Exhibit 12, for LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 206</p> <p>2 A The auditors prepare the financial</p> <p>3 statement based on the DHCR financial</p> <p>4 statement classification and form. The forms</p> <p>5 are specified by DHCR. They not something</p> <p>6 that the accounting firm, you know, decides</p> <p>7 what they want to do or Gapp or anything else.</p> <p>8 It's done according to DHCR rules. They</p> <p>9 provide the outline. They provide the forms</p> <p>10 that have to be prepared and that's what was</p> <p>11 prepared.</p> <p>12 Q DHCR tells you how to fill out</p> <p>13 those forms?</p> <p>14 A DHCR has instructions as to what</p> <p>15 has to go on each form.</p> <p>16 Q DHCR indicates that only the</p> <p>17 \$34,000.00, should be reported on the</p> <p>18 financial statement when \$108,000.00 was</p> <p>19 actually received?</p> <p>20 MR. KELLY: Objection to</p> <p>21 form.</p> <p>22 MR. TRAUB: Objection to</p> <p>23 form..</p> <p>24 A We would have to look at the</p> <p>25 specific instructions that DHCR provides along LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 208</p> <p>2 identification, as of this</p> <p>3 date.)</p> <p>4 A What this shows is that there was</p> <p>5 a payment made of \$125,000.00 in the year 2006</p> <p>6 and I don't see any of our Dalton codes that</p> <p>7 would show that this was in fact paid, 'cause</p> <p>8 usually there is a code on the invoice that</p> <p>9 would correspond to the code of 103442. I</p> <p>10 question that so I couldn't tell you it's the</p> <p>11 same amount.</p> <p>12 MR. HAYWOOD: I am going to</p> <p>13 ask that we mark this as</p> <p>14 Plaintiff's Exhibit 13.</p> <p>15 (A document showing a check</p> <p>16 being paid for \$15,000.00</p> <p>17 was marked as Plaintiff's</p> <p>18 Exhibit 13, for</p> <p>19 identification, as of this</p> <p>20 date.)</p> <p>21 Q My question will be does that</p> <p>22 inform your opinion?</p> <p>23 A No.</p> <p>24 No, all this says is that we paid</p> <p>25 a check for \$15,000.00 invoice 103442. LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 209</p> <p>2 Usually I see -- even though it corresponds I 3 usually get an item, but it appears to be the 4 same amount. The question that I also noticed was there seems to be some other adjustments, v which we are not seeing, because when I take 7 \$108,000.00 and take away 83 from that I only 8 come up with 25 and the audit fee that's shown 9 is 34, so there is another adjustment that we 10 are not seeing.</p> <p>11 Q I ask again whose responsibility 12 is the financial statement, is it the 13 responsibility of Dalton or the responsibility 14 of Marks, Paneth & Shron?</p> <p>15 MR. TRAUB: Objection to 16 form.</p> <p>17 MR. KELLY: Objection to 18 form.</p> <p>19 A Dalton Management produces the -- 20 produces the information, gives it to Marks, 21 Paneth & Shron. They convert it to accrual 22 and produce the financial statement.</p> <p>23 Q But who has the responsibility, 24 sir, in your opinion for the financial 25 statement?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 211</p> <p>2 whose responsibility it is? I am just showing 3 the item to you, it's not marked at this time, 4 to insure what's in the financial statement.</p> <p>5 MR. TRAUB: Objection to 6 form.</p> <p>7 MR. KELLY: Objection to 8 form.</p> <p>9 Q Would that change your opinion as 10 to whose responsibility it is?</p> <p>11 MR. KELLY: Objection to 12 form.</p> <p>13 MR. TRAUB: Objection to 14 form.</p> <p>15 I think you have two 16 different questions that you 17 asked.</p> <p>18 Do you want to stick with 19 your last one?</p> <p>20 Q If the witness understands let him 21 answer.</p> <p>22 MR. TRAUB: I want to make 23 sure that he's answering the 24 question. You asked two in a 25 row.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 210</p> <p>2 MR. TRAUB: Objection to 3 form.</p> <p>4 MR. KELLY: Objection to 5 form.</p> <p>6 Q Between the two?</p> <p>7 A The financial statement is 8 produced by Marks, Paneth & Shron in their 9 audit procedures and submitted to us and then 10 distributed.</p> <p>11 Q I am going to show you a document, 12 an independent auditors report for Marks, 13 Paneth & Shron to Fifth and 106th Street 14 Corporation and read you from the first 15 paragraph?</p> <p>16 The comments, these financial 17 statements are the responsibilities of the 18 partnership management. Our responsibility is 19 to express an opinion on these financial 20 statements based on our audits?</p> <p>21 Have you read that representation 22 in the independent auditor's report by Marks, 23 Paneth & Shron?</p> <p>24 A No.</p> <p>25 Q Would it change your opinion as to LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 212</p> <p>2 MR. HAYWOOD: Let him 3 explain if he doesn't understand 4 it.</p> <p>5 A The financial statement is audited 6 by Marks, Paneth & Shron. They then produce 7 the financial statement in the form required 8 by the various agencies. Dalton provided them 9 with the information to produce that, which we 10 do.</p> <p>11 Q Did you ever tell Marks, Paneth & 12 Shron, "Okay, I agree with your 13 characterization, with your adjustments to 14 change the \$180,000 we put in the general 15 ledger to \$34,000.00 and send it to DHC?" 16 Did you ever sign off or to consent to that in 17 writing or orally or in any other way.</p> <p>18 MR. KELLY: Objection to 19 form.</p> <p>20 MR. TRAUB: Objection to 21 form.</p> <p>22 Q Did you ever consent to that?</p> <p>23 A Not that I recall.</p> <p>24 Q Were you ever asked to consent to 25 that?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 213</p> <p>2 A I don't remember if I was specifically on that item.</p> <p>4 Q Were you asked to consent to any 5 of these journal adjustments that were coming 6 from Marks, Paneth & Shron in great numbers 7 and great volumes?</p> <p>8 MR. TRAUB: Objection to 9 form.</p> <p>10 MR. KELLY: Objection to 11 form.</p> <p>12 A The reclassifications that they made were acceptable to us and were booked by 13 us.</p> <p>15 Q Where you said you didn't put them 16 in your he general ledger?</p> <p>17 MR. KELLY: Objection to 18 form.</p> <p>19 MR. TRAUB: Objection to 20 form.</p> <p>21 A That is not what I said. I said we booked the required 22 adjustments that I needed to make to put my 23 books in agreement, my balance sheet items in 24 agreement with what they had in their audit, LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 215</p> <p>2 no.</p> <p>3 MR. HAYWOOD: Ms. 4 Torregrossa is not going to 5 record my answer she is going to 6 record his answer.</p> <p>7 MR. TRAUB: You don't need 8 to clarify his answer.</p> <p>9 Maybe we should take a break at this point. Let's take a quick break.</p> <p>10 (Whereupon, a recess was 11 taken at this time.)</p> <p>12 (A 2006 financial statement 13 was marked as Plaintiff's 14 Exhibit 14, for 15 identification, as of this 16 date.)</p> <p>17 Q Exhibit 14 is?</p> <p>18 A 2006 financial statement.</p> <p>19 MR. KELLY: For what entity?</p> <p>20 THE WITNESS: Fifth and 106th Street Associates.</p> <p>21 MR. TRAUB: You had asked 22 the question about that letter 23 LEX REPORTING SERVICE 24 800-608-6085</p>
<p>1 Dawley 214</p> <p>2 in their final audit.</p> <p>3 Q Do you have any piece of paper or 4 communication or back and forth between you 5 and Marks, Paneth & Shron, to show that as an 6 auditor that they suggested these changes to 7 Dalton and that Dalton accepted them?</p> <p>8 MR. TRAUB: Objection to the 9 form.</p> <p>10 MR. KELLY: Join.</p> <p>11 Q Do you have any type of paper 12 trail or any other record to show that they 13 were suggesting it to you and you were 14 acquiescing to it?</p> <p>15 MR. KELLY: Objection to 16 form.</p> <p>17 A Not that I recall.</p> <p>18 MR. TRAUB: And in point of 19 fact --</p> <p>20 MR. HAYWOOD: Break, break.</p> <p>21 Are you testifying now for 22 him? He said he doesn't recall.</p> <p>23 Don't put words in his mouth?</p> <p>24 MR. TRAUB: The answer was I 25 don't recall. Your answer was LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 216</p> <p>2 and then we said we would mark it 3 over the break.</p> <p>4 MR. HAYWOOD: And this was 5 the statement.</p> <p>6 MR. TRAUB: About 7 responsibilities.</p> <p>8 MR. HAYWOOD: About 9 responsibilities of management 10 okay.</p> <p>11 Q This \$15,000.00 that came from 12 2001, the deduction was taken in 2006, is that 13 correct?</p> <p>14 MR. TRAUB: Objection to 15 form.</p> <p>16 MR. KELLY: Objection to 17 form.</p> <p>18 A Well, I just glanced through and we are going to have to look at the final trial balance and all the adjustments in order to make that determination, because when you take 108 less the 83 you come up with about \$23,000.00 or \$24,000.00 of audit fees in accounting. Yet there is \$34,000.00 in the financial statement, which is a \$10,000.00 LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 2 difference. If you also look under management 3 consulting \$82,900.00, the financials come up 4 to about \$59,000.00, so there has got to be another adjustment to that amount as well, so I really can't answer that question.</p> <p>7 Q Is there a reason why the 2001 8 expense wouldn't have been accrued?</p> <p>9 A That's what I am telling you.</p> <p>10 MR. KELLY: Objection to form.</p> <p>12 A I can't make that determination without seeing the rest of the adjustments. I have to look at all adjustments to all of those accounts in order to make the determination as to whether it was expensed in this year or it was previously expensed and not paid for until now, which includes accounts payable.</p> <p>20 Q But if your financial statements are on an accrual basis, then it would be reasonable to expect that that expense would have been accrued, would it not?</p> <p>24 MR. TRAUB: Objection to form.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 219</p> <p>2 MR. KELLY: And I am 3 objecting to it.</p> <p>4 Q Looking at the journal entries 5 none of them say anything about accrual, do 6 they?</p> <p>7 A If you look at the financial, the 8 trial balance as adjusted for management 9 consultant fees.</p> <p>10 Q State the page number for the record.</p> <p>12 A Page number it's three of five the 13 management consultant fees on the unadjusted, 14 means the amount we had under consultant 15 \$23,899.00 to that figure there was several 16 adjustments. Adjustment number 8, adjustment 17 number 23 -- adjustment number 23 and number 18 25, which changed the balance from \$23,899.00 19 to \$59,977.00. Part of the \$32,999 was taken 20 out. Somehow I'd have to look back and 21 examine all the journal entries, as well as 22 accounts payable, which we don't have all that 23 information here to come up with the amount 24 whether or not that \$15,000.00 was indeed 25 expensed in the year 2006.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 218</p> <p>2 MR. KELLY: Objection to form.</p> <p>4 A That expense could very well have been expensed and accrued in the year 2002/2003.</p> <p>7 Q Then deducted again in 2006?</p> <p>8 MR. KELLY: Objection to form.</p> <p>10 A That is what I am telling you is that we can't determine from the information you provided.</p> <p>13 MR. HAYWOOD:</p> <p>14 Unfortunately, we don't provide 15 the information.</p> <p>16 May I ask that if your counsel feels that it desirable that you look into this and see if we can get some answer as to whether it was in fact accrued in 2001 and then billed in total again in 2006. I would ask that you make that inquiry.</p> <p>24 MR. TRAUB: We will take it 25 under advisement.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 220</p> <p>2 Q Are those accrual adjustments?</p> <p>3 A Those are all accrual adjustments.</p> <p>4 Q Now, looking at Plaintiff's 12 5 again, there is a bill that was paid in 2006. 6 I am looking at the series of charges: 7 1/25/2000 and special project, 11/6/2000 8 audit, 1/17/2000 work paper review, field 9 work, field work, work paper, work paper, work 10 paper, work paper, field work, work paper and 11 audit planning.</p> <p>12 Is there any way that in 2006 when 13 these charges, which are Plaintiff's 12 14 of February 24th, were presented? Is there 15 any way that anybody could determine the bona 16 fides of such claims?</p> <p>17 MR. TRAUB: Objection to 18 form.</p> <p>19 MR. KELLY: Objection to 20 form</p> <p>21 A What do you mean, I don't 22 understand?</p> <p>23 Q I mean if I showed up at Dalton 24 tomorrow and said back in 1999 and '98 and '97 25 I have billings, as I well might, that are not</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 221</p> <p>2 addressed and I gave categorizations like that 3 would there be any way that anyone could tell 4 six, seven, eight years later that anyone 5 could make a judgment as to is this real or 6 what?</p> <p>7 MR. TRAUB: Objection to 8 form.</p> <p>9 MR. KELLY: Objection to 10 form.</p> <p>11 A This is a bill that's usually done 12 by professionals that have a list of 13 categories of what they do. You don't put 14 down 50,000 categories, because it's too hard 15 to work with, so you try to pare it down to 16 the major things you do and you come up with a 17 few -- a lot fewer categories and you make 18 your work and you charge them under one of 19 those categories. That is what they are doing 20 here. I am assuming that, but I know how 21 accounting is billed and I am sure Cameron and 22 his crew do the same thing. They don't put 23 down the dissertation of every half hour. 24 They put down as to exactly what they did 25 reconcile journal number 17 on the client's</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 223</p> <p>2 billing invoice was marked 3 as Plaintiff's Exhibits 15 4 and 16, for identification, 5 as of this date.)</p> <p>6 Q Sir, I just want to go back with 7 regard to the last question. 8 Shouldn't you have known that this 9 amount was not accrued?</p> <p>10 MR. TRAUB: Objection. 11 MR. KELLY: Objection to 12 form.</p> <p>13 A I don't remember every account 14 that was accrued for ten companies that 15 includes thousands in transactions a year. 16 I'm not going to remember that.</p> <p>17 MR. HAYWOOD: Let's start 18 with 7. That's 15. It refers to 19 a mortgage closing consultation 20 and professional fees, which 21 would be item 3 and item 8 there 22 and payable in 2006 and I am 23 going to admit another document 24 as Plaintiff's Exhibit 17.</p> <p>25 (A Gray Stone Fannie May LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 222</p> <p>2 books. It's not going to happen they take 3 more time in doing their billing than they 4 ever get done. You have to look at the 5 billing of a lot more than \$15,000, which 6 indicates a lot was already paid in prior 7 years, so this Exhibit 12 is not just for 8 \$15,000.00 it's for more than that. So you'd 9 have to look at what their categories mean and 10 you would be able to go ahead. I'm sure 11 Marks, Paneth & Shron has got some category 12 description of what they like to have and what 13 they like to charge it under and go from 14 there. I don't know it for a fact, but that's 15 usually the way accountants do their billing.</p> <p>16 Q But the balance was not accrued?</p> <p>17 MR. TRAUB: Objection to the form.</p> <p>18 MR. KELLY: Join.</p> <p>19 A I don't know that.</p> <p>20 MR. HAYWOOD: I am going to ask Ms. Torregrossa to mark former Exhibits 7 and 8 as Plaintiff's Exhibits 15 and 16.</p> <p>21 (A mortgage closing and a LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 224</p> <p>2 settlement was marked as 3 Plaintiff's Exhibit 17, for 4 identification, as of this 5 date.)</p> <p>6 Q That document 15 and that 7 accounting and 16 that billing, what is the 8 date on it?</p> <p>9 A June the 9, 2005.</p> <p>10 Q June 9, 2005 appears to assert a 11 bill for \$23,000.00 reduced by \$1,000.00 to 12 \$22,000.00 pertaining to a closing, which took 13 place March 30, of 2004.</p> <p>14 A Okay.</p> <p>15 MR. TRAUB: Objection to form.</p> <p>16 Q Can you tell from those Exhibits what the \$22,000.00 was paid for?</p> <p>17 A First of all, I was not included or did I attend the refinancing.</p> <p>18 Q Go ahead.</p> <p>19 A Number 2, the billing I don't remember any of these -- seeing any of the Exhibits that you indicated here. The first</p> <p>20 LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 225</p> <p>2 one Exhibit 15 I would assume that in the 3 refinancing the cost that you incur in 4 refinancing can't be expensed in the first year. They have to be over a period of time, usually the length of the loan so that is what I would assume the first Exhibit 15 indicates.</p> <p>8 The second is an invoice looks 9 like they originally billed us \$32,588.00. 10 They have nonbillable \$3,811.00 and then they 11 also gave us a discount. They wrote down 12 another \$7,555.00, which left a balance of 13 \$23,022.00 and there is a note down below that 14 there is a reversal of prior year management 15 consultant accrual of \$1,000.00 that I would 16 presume was for some work that was done prior 17 to the year 2005 and 2004 in regard to the 18 refinancing. The Gray Stone Fannie May 19 settlement statement never seen that. It's a 20 settlement statement of the Logan refinancing. 21 That is all I can tell you about that.</p> <p>22 Q But it refers to the \$22,000.00, 23 does it not?</p> <p>24 A Where? 25 I don't find it. Somebody is LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 227</p> <p>2 anticipated closing, all right. What's the 3 question?</p> <p>4 Q How does it wind up being paid a 5 year later the actual consulting fee.</p> <p>6 A 'Cause we didn't get billed until 7 June of 2005.</p> <p>8 Q A year later?</p> <p>9 A A year later.</p> <p>10 Q Under Gagas and Gapp should an 11 auditor be owed thousands of dollars by the 12 accountant by the business that's auditing or 13 should it not be in that position?</p> <p>14 MR. TRAUB: Objection to the form.</p> <p>15 MR. KELLY: Objection to the form.</p> <p>16 MR. TRAUB: That calls for a legal conclusion.</p> <p>17 MR. KELLY: Objection to form and just for the record Gapp is G-A-P-P.</p> <p>18 MR. HAYWOOD: Calls for an auditor's opinion.</p> <p>19 MR. TRAUB: You're asking LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 226</p> <p>2 going to have to point it out.</p> <p>3 Q But the question is how does a 4 closing that's consulted in 2004 wind up being 5 addressed a year later in 2005?</p> <p>6 MR. TRAUB: Objection to form.</p> <p>7 MR. KELLY: Objection to form.</p> <p>8 MR. TRAUB: Are you 9 withdrawing your statement about 10 the \$22,000.00 appearing in 11 Exhibit 17?</p> <p>12 Q Well, I can't break it out of that 13 document.</p> <p>14 MR. TRAUB: I didn't want to 15 leave a question unanswered.</p> <p>16 Q How is a closing in 2004 being 17 paid a year later?</p> <p>18 A How is what being paid, how is the 19 bill being paid you mean?</p> <p>20 Q The consulting fee for the closing.</p> <p>21 A Let's see when it closed. 22 Statement says March of 2004 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 228</p> <p>2 him if something under a rule 3 complies or not. That is a legal 4 opinion.</p> <p>5 Q Let me go back to this document 6 Plaintiff's 17.</p> <p>7 Who put that charge on this 8 financial statement?</p> <p>9 MR. TRAUB: What charge?</p> <p>10 MR. HAYWOOD: The 11 consulting charge.</p> <p>12 MR. TRAUB: Can you show us 13 what consulting charge you're 14 referring to? I think that was 15 the earlier question.</p> <p>16 A This is an invoice dated 6/9/2005 17 for \$22,000.00 for, let's see, special 18 consulting regarding refinancing transaction, 19 new mortgage, pay off of existing debt, budget 20 June 30th, surplus cash, limited partners 21 request, property tax arrear and other 22 matters. So it's not just a refinancing. It 23 doesn't appear to be. Looks like it's several 24 other items as well.</p> <p>25 Q It's billed to a year later? LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 229</p> <p>2 A Well, not necessarily. 3 It depends on when they did the 4 work on these other items. June 30th surplus 5 cash, you know, would that be a year ago or is 6 that the current year and they are doing 7 budgets that would be for a future year so I 8 don't know when they did that. There is 9 nothing to indicate when it took place so I 10 don't know.</p> <p>11 MR. HAYWOOD: Mark this 12 please as Plaintiff's 18. It is 13 Number 9 from February 3rd. 14 (A document was marked as 15 Plaintiff's Exhibit 18, for 16 identification as of this 17 date.)</p> <p>18 Q Now, Number 18 speaks to some sort 19 of an overage, is that correct?</p> <p>20 A That's correct.</p> <p>21 Q What is happening there if you 22 know.</p> <p>23 MR. KELLY: Objection to 24 form.</p> <p>25 A What happened was that the amount LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 231</p> <p>2 MR. KELLY: Objection to form.</p> <p>3 A This is Church Home. It wouldn't have went to DHCR.</p> <p>4 Q Would it have gone to HUD?</p> <p>5 A Yes.</p> <p>6 Q Did it come to HUD's attention at any time this overpayment?</p> <p>7 A Yes, it did.</p> <p>8 Q What if anything did they do?</p> <p>9 A They wanted verification that it was re-paid and cancelled checks, which were provided.</p> <p>10 Q Now, say that the overpayment over the three year period would be \$35,000.00 approximately and the calculations performed by Marks, Paneth & Shron show what amount of overpayment on that document?</p> <p>11 A Let's see 2004 looks like -- 2004 looks like it was 16,753 and 2005 11,169. So what's that, 27,000?</p> <p>12 Q The amount of money paid I suppose. to settle this overpayment was how much?</p> <p>13 A Whatever the overage was. If this LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 230</p> <p>2 that was paid on the management fee each month 3 was incorrect.</p> <p>4 Q How was it incorrect, sir?</p> <p>5 A It was more than it should have been.</p> <p>6 Q How much more?</p> <p>7 A I think totally it ended up -- I 8 have to remember. Forty grand, thirty-five 9 grand. It took over -- it was for several 10 years, like for two or three years.</p> <p>11 Q What were the years in question?</p> <p>12 A I don't recall.</p> <p>13 Q Does the document show any indication?</p> <p>14 A Looks like three, four, and five.</p> <p>15 Q Now, was this something that Marks, Paneth & Shron picked up or was it something that DHCR picked up?</p> <p>16 A Marks, Paneth & Shron.</p> <p>17 Q You have an independent recollection of that?</p> <p>18 A Yes.</p> <p>19 Q When they picked it up did it come to the attention of the DHCR?</p> <p>20 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 232</p> <p>2 was 27,000 or 28,000 that's what was paid 3 back.</p> <p>4 MR. KELLY: Let me also say for the record that looks like a photocopy of that cut off the last three inches.</p> <p>5 THE WITNESS: 03 the numbers appear to be cut off.</p> <p>6 MR. HAYWOOD: I withdraw my questions as to Plaintiff's 18.</p> <p>7 Now, recently we served a notice to produce inquiring into the payment allocations of the investments represented by Dalton and we inquired into the other investments owned by the Seavey's which are serviced by Dalton and in response to that discovery request we received this document which I am marking this as Plaintiff's Exhibit 19.</p> <p>8 (A statement pertaining to Church Home, Logan Plaza and Charles Hill was marked LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 2 as Plaintiff's Exhibit 19, 3 for identification, as of 4 this date.) 5 MR. TRAUB: I am going to 6 object to your categorization of 7 this document. This document was 8 not produced in response to your 9 request for other partnerships 10 and housing projects managed by 11 Dalton. In fact I -- 12 MR. HAYWOODE: Let me 13 correct that statement. 14 We at first requested that 15 the statement of all the 16 developments managed by Dalton by 17 discovery and that was not 18 provided. That was objected to. 19 MR. TRAUB: Exactly. 20 MR. HAYWOODE: We then asked 21 for a statement concerning the 22 payroll allocation issue. We 23 then requested a statement of the 24 investments that were represented 25 by Dalton again by way of the LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 235 3 MR. HAYWOODE: The order to 4 show cause. 5 Plaintiff's 20 is a more 6 fullsome sheet, which seems to 7 reflect investments that were 8 cropped off from Plaintiff's 9 Exhibit 19. 10 MR. TRAUB: There are 11 different dates. I just want to 12 point out that 19 and 20 are two 13 different dates. One is 14 September 06 and one is October 15 of 06. 16 Q Well, is there a reason that with 17 the second submission only the three 18 investments were provided, whereas in the 19 first submission all of the investments 20 including Lakeview were provided, is there a 21 reason that was? 22 MR. TRAUB: I am going to 23 object to the form and not allow 24 the witness to answer. 25 Q Is there a reason that it was altered in that manner before its production LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 2 234 3 discovery request and we received 4 Plaintiff' 19, which shows Church 5 Home, Logan Plaza and Charles 6 Hill. Fifth and 106th Street is not on that list. 7 Q My question is was there a reason 8 that Fifth and 106th Street was cut out of the 9 production? 10 MR. KELLY: Objection to form. 11 MR. TRAUB: Objection to form. 12 A Fifth and 106th Street does not get front-line allocation. 13 MR. HAYWOODE: Now, in the original pleading let's call this Plaintiffs 20. 14 (The order to show cause was marked as Plaintiff's Exhibit 20, for identification, as of this date.) 15 MR. TRAUB: When you say the original pleading? 16 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 236 3 to us? 4 MR. TRAUB: I am going to 5 instruct the witness not to 6 answer, calls for a legal conclusion. 7 MR. HAYWOODE: The reason 8 why this was cropped off is a 9 legal conclusion? 10 MR. TRAUB: Absolutely, Mel. 11 This was done -- I don't 12 know where you got this from. 13 You told just told me this came 14 from your order to show cause so 15 this wasn't part of discovery 16 production. This being 17 Plaintiff's Exhibit 20. 18 Plaintiff's Exhibit 19, 19 which is September 2006, was 20 produced during discovery. 21 Number one, there is nothing to 22 show that there was anything that 23 was cut off, but number 2, as 24 I've stated in my objections to 25 your discovery and to your LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 2 requests numerous times, only the 3 four partnerships that are at 4 issue in this litigation are 5 relevant to this litigation and 6 discovery. With respect to 7 confidential and privileged 8 information as to partnerships 9 that your client is not a partner 10 in is not relevant to this 11 litigation.</p> <p>12 MR. KELLY: I object to 13 form.</p> <p>14 Q Isn't it a fact that the first 15 document ways given by you, Mr. Dawley, to 16 Sandra Griffiths when they were in the process 17 of going to Dalton to get these?</p> <p>18 MR. TRAUB: Before 19 litigation was commenced?</p> <p>20 MR. HAYWOOD: Yes.</p> <p>21 A Yes. 22 They wanted to know -- they didn't 23 understand how front-line was done, so they 24 picked a month or I picked a month I don't 25 recall. We picked a month and I provided them</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 239 3 you, but I told them I wouldn't produce it. 4 Q It never came to your attention 5 that she said to them if you want that you're 6 going to have to sue us? 7 A No, but I told them I wouldn't 8 give it to them. 9 Q The plaintiffs are concerned with 10 the large number of investments that Marks, 11 Paneth & Shron represent here on behalf of the 12 Seavey's and I believe there is some private 13 buildings that they represent and the 14 plaintiff's concern is that the large amount 15 of monies being paid to Marks, Paneth & Shron 16 and the fact that it provides personal 17 services to individuals of the Seavey family 18 might jaundice their judgment in performing 19 the audits of these books. It was by reason 20 of that, that we asked for discovery as to all 21 of the buildings. 22 Did anyone tell you at our second 23 request not to give us copies of the full 24 sheet, but only provide the three buildings? 25 MR. TRAUB: Objection to form.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 2 238 3 with everything that's done in the month in 4 order to produce the front-line allocation and 5 I am sure that's where this form came from was 6 from that production and they were welcome to 7 look at those. That also gave them the 8 information of what everybody's salary was. 9 It gave them the information on who everybody 10 was. It gave them the information on what 11 people were allocated and how much was 12 allocated from every person. They were also 13 given the information on how much the payroll 14 taxes were, medical expenses and other items 15 that were included in these line items for the 16 front line allocation determination.</p> <p>17 Q They requested personnel reports 18 on each of the persons at the central office. 19 A Was that given to them? 20 Q Did you tell them that or did 21 Phyllis Seavey tell them if you want that 22 you're going to have to sue us? 23 MR. TRAUB: Objection to the 24 form. 25 A I don't remember what she told</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 240 3 I am not going to allow you 4 to answer. That would ask for 5 the invocation of the 6 attorney/client work privilege. 7 MR. KELLY: I am going to 8 object too for several reasons, 9 but since this is not going to be 10 answered I won't go into details. 11 Q Did any non-attorney tell you not 12 to provide the full sheet the second time we 13 requested, but to truncate it and to provide 14 only the three investments? 15 MR. TRAUB: Again objection 16 to form. 17 If they do so it would have 18 been at the instructions of 19 counsel. 20 MR. HAYWOOD: I object to 21 that bit of speculation. 22 MR. TRAUB: That is nice, 23 Mel, but I am not allowing him to 24 answer. 25 MR. KELLY: I am going to object as well, but since this is</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 2 not going to be answered I am not 3 going to go in detail on my 4 objection. Q Is it not a fact that Plaintiff's 5 19 is a cropped and purposely abridged version 6 of Plaintiff's 20? 7 MR. TRAUB: Again objection 8 to the form. 9 The documents speak for 10 themselves. 11 MR. KELLY: I am objecting 12 as well. 13 MR. TRAUB: We are already 14 went over, as I pointed out at 15 the beginning, they are 16 completely two different months. 17 As I pointed out in my earlier 18 statement, Plaintiff's 19 is 19 September of 06 and Plaintiff's 20 20 is October of 06. They are 21 different documents. Q Would the statement of October 22 20th of 06, have listed the other building 23 along with those three? LEX REPORTING SERVICE 24 800-608-6085</p>	<p>1 Dawley 2 the software? 3 MR. HAYWOOD: Yes. 4 MR. TRAUB: I am going to 5 object to the form. The document 6 speaks for itself as does my 7 objections that were given in 8 response to your document 9 request. 10 MR. HAYWOOD: Are you 11 directing the witness not to 12 answer? 13 MR. TRAUB: I direct the 14 witness not to answer on the 15 grounds of attorney/client work 16 product. 17 MR. HAYWOOD: Assuming that 18 an attorney told him to do it. 19 MR. TRAUB: Including 20 someone at the direction of an 21 attorney told him to do it. In 22 fact, knowing that someone at the 23 direction of an attorney told him 24 to do that. 25 MR. HAYWOOD: I think you LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 2 242 3 MR. TRAUB: Objection to the 4 form. A October 20th of 06 shows all the 5 buildings. September of 06 only shows the 6 three buildings and the allocation of 7 front-line to each one. 8 MR. TRAUB: Are you asking 9 for the software this is printed 10 from. Q In September of 2006 would this 11 document have shown the other building in 12 question? 13 MR. TRAUB: Objection to 14 form. 15 This was printed from a 16 software and so are you asking if 17 the software has more 18 information? 19 MR. HAYWOOD: I am asking 20 if there is any way if they 21 truncated or cut off the rest of 22 this document. 23 MR. TRAUB: In other words, 24 did they only print a portion of 25 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 244 3 argued yourself into that box. 4 MR. TRAUB: It is not a box. I stand by my objection. 5 MR. EDMONDS: Can I put two or three questions to him? 7 MR. TRAUB: I do recognize you're a member of the Bar. In this matter you're not a counsel of record. If you have three questions I ask that your counsel be given that, but I am not going to allow a non-counsel of record to -- 15 MR. EDMONDS: Plaintiff does not have the right to inquire of a witness? 18 MR. TRAUB: Unless you can show me why you would, I am not going to allow it, but if you have questions I ask you to write them down and give them to your counsel. 24 MR. EDMONDS: I desire to. 25 MR. HAYWOOD: Why don't we LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 245</p> <p>2 let him ask it and then you can 3 object to it.</p> <p>4 MR. TRAUB: I don't get why 5 you can't just ask it if they are 6 written down. I would be more 7 comfortable.</p> <p>8 MR. EDMONDS: They are not 9 written down. The introduction 10 is. It is only because I want to 11 introduce these questions in this 12 fashion, but it would seem to me 13 that as a plaintiff I have a 14 right to examine this witness.</p> <p>15 MR. TRAUB: You just did for 16 the last seven, eight hours 17 through your attorney.</p> <p>18 MR. HAYWOOD: Well, now he 19 did this before. Let's let him 20 put the questions and you object 21 to that.</p> <p>22 MR. TRAUB: I recognize he 23 did it before, but not with my 24 client. It was Mr. Jennings and 25 his counsel allowed it.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 247</p> <p>2 seems silly, but that's fine. 3 MR. KELLY: I object. 4 MR. EDMONDS: What is the 5 total dollars in the 6 non-distributable reserve account 7 of Fifth and 106th Street 8 Associates?</p> <p>9 Q What is the total dollars in the 10 non-distributable reserve account of Fifth and 11 106th Street Associates?</p> <p>12 MR. TRAUB: Objection to 13 form.</p> <p>14 THE WITNESS: As of when? 15 MR. EDMONDS: As of now.</p> <p>16 Q As of now. 17 A Now, as of now today in all 18 reserve accounts nonrestricted there is 19 probably around 800,000.00.</p> <p>20 MR. EDMONDS: Does your 21 record reflect, the amount that 22 was delivered as a reserve 23 account to Dalton Management as 24 of the time that they assumed 25 management for each of the LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 246</p> <p>2 MR. EDMONDS: You're going 3 to direct the witness not to 4 answer the question?</p> <p>5 MR. TRAUB: I am not 6 actually going to allow you to 7 ask them.</p> <p>8 MR. EDMONDS: You're not 9 going to prevent me from 10 asking him?</p> <p>11 MR. HAYWOOD: I am going to 12 ask Mr. Edmonds to say to me what 13 his questions are, let him say it 14 out loud so we get it right.</p> <p>15 MR. TRAUB: My other issue 16 is tag-teaming of getting a 17 deposition. You're entitled to 18 one interrogatory. As the 19 counsel of record you have been 20 doing it since 10:30 this 21 morning, so I don't see the need 22 to all of a sudden to allow the 23 plaintiff to ask questions, but 24 if you want to ask the questions 25 and then you can repeat them it</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 248</p> <p>2 projects?</p> <p>3 Q Does your record reflect, the 4 amount that was delivered as a reserve account 5 to Dalton Management as of the time that they 6 assumed management for each of the projects?</p> <p>7 MR. TRAUB: This is a little 8 confusing. 9 I ask that we take a break 10 and your client can tell you the 11 questions he has. We are near 12 the end. It's 5:00. 13 MR. EDMONDS: This isn't 14 working.</p> <p>15 A Do you have to ask it again what 16 are we doing? 17 Every reserve account that was 18 turned over to us by the prior management 19 company was put into accounts required by DHCR 20 so some of the reserve accounts are not under 21 our control. They are controlled by DHCR. 22 You have to request the money from them. You 23 have to have proof of your expenditure; for 24 example, real estate taxes and provide that 25 support to DHCR. They review it. They LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 249</p> <p>2 approve it. They countersign the check, which 3 has to be signed by one of the general 4 partners, so it takes two signatures and then they -- that money flows into operating and from operating sometimes it goes to the taxes, sometimes it goes to -- direct to depending upon which reserve account it comes out.</p> <p>Q What is the total amount of reserves that were in DHCR and held by the corporation when Dalton took over approximately?</p> <p>MR. TRAUB: Objection. It's a compound question.</p> <p>A I couldn't begin to tell you.</p> <p>That is way too long ago. That was in 2000 and I don't recall.</p> <p>MR. HAYWOOD: I will call for the production of that information.</p> <p>MR. EDMONDS: One further question.</p> <p>Are the reserve accounts under Dalton's control invested and reinvested?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 251</p> <p>2 the role of an auditor? MR. KELLY: Objection to form.</p> <p>Asked and answered. MR. TRAUB: Objection to form.</p> <p>MR. KELLY: Objection for form?</p> <p>THE WITNESS: Can I answer it?</p> <p>MR. TRAUB: No.</p> <p>Q Do you consider Marks, Paneth and Shron to be the auditors?</p> <p>MR. TRAUB: You mean Mr. Dawley?</p> <p>Q I am sorry, to be the accountant with regard to these matters?</p> <p>MR. TRAUB: Objection to form and asked and answered.</p> <p>MR. KELLY: Objection to form.</p> <p>A You said that I assume that they are the accountant or the auditors?</p> <p>Q Do you consider that their role is LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 250</p> <p>Q Are the reserve accounts that Dalton controls as opposed to DHCR invested and reinvested by Dalton or --</p> <p>A Well, we have --</p> <p>MR. TRAUB: Objection to the form.</p> <p>A We have one account with Chase, which is invested and Farm Credit notes and money markets and the other account an excess income account that's invested in money markets. No, excuse me -- yeah, it's money. Markets. The other accounts are held and controlled by DHCR and invested by them.</p> <p>MR. EDMONDS: On behalf of the partnership, is that correct?</p> <p>THE WITNESS: That's correct.</p> <p>MR. EDMONDS: No further questions.</p> <p>Q Is it fair to say that from your testimony and from the use of the adjusted journal entries, is it fair to say that the role of Marks, Paneth & Shron in this matter is more the role of the accountant than it is</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 252</p> <p>2 such that you consider them to be the accountant rather than the auditors?</p> <p>A No.</p> <p>MR. HAYWOOD: I ask that you mark this document as Plaintiff's Exhibit 21. (A letter dated November 25, 2008 was marked as Plaintiff's Exhibit 21, for identification, as of this date.)</p> <p>Q It's a letter dated November 25, 2008.</p> <p>Did you write that letter?</p> <p>A Yes.</p> <p>Q Would you read the letter, who is the letter sent to?</p> <p>A John Edmonds with reference to Logan Plaza. It's dated November the 21, 2008 and it refers to his letter dated November the 17, 2008 and it reads, in that your statements and numbers appear to have no relationship to the books and records of Logan Plaza as I know them, I am referring your letter of Logan to</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 253</p> <p>2 the accounting firm of Marks, Paneth & Shron 3 LLP, i.e. Bill Jennings and request that we 4 have your accountant contact them for 5 explanation.</p> <p>6 Q You wrote that letter? 7 A Yes. 8 Q You signed that letter? 9 A Yes. 10 Q You said in that letter that 11 Marks, Paneth & Shron is the accountant? 12 MR. TRAUB: Objection. 13 MR. KELLY: Objection to the 14 form. 15 MR. TRAUB: Objection to 16 form. 17 Misstates the letter. 18 A It says -- 19 Q You said in that letter -- 20 A Accounting. 21 Q Marks, Paneth and Shron was the 22 accounting firm for the corporation, is that 23 correct, you said that? 24 A Yes. 25 MR. HAYWOOD: No further LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 255</p> <p>2 line, so that the audit shows that. So that 3 my beginning balance on the next year, which 4 is January 1st, will reflect only the balance 5 sheet items that I need to start with.</p> <p>6 Q The original entries remain on the 7 general ledger, correct? 8 A Yes, everything stays there. 9 Q So anyone reviewing that general 10 ledger, would be able to see exactly what 11 money was paid to what vendor at any 12 particular time?</p> <p>13 A Yes. 14 MR. TRAUB: Objection to 15 form. 16 A Yes. 17 Q When you make that adjusting 18 journal entry that one time, is that a 19 separate entry on the general ledger such that 20 someone reviewing it for that period would see 21 that entry? 22 A Yes, I have complete back up. 23 Everything is coded, labeled and there is a 24 sheet at the very end that prints out what was 25 actually posted in the BJ Murray software LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 254</p> <p>2 questions. 3 EXAMINATION BY 4 MR. KELLY: 5 Q Good afternoon Mr. Dawley. There 6 was lots of questions about adjusting journal 7 entries. I'd just like to ask you a few more. 8 What is your understanding of an 9 adjusting journal entry? 10 MR. HAYWOOD: Objection. 11 Calls for a legal opinion. 12 A It's an entry that makes a journal 13 entry to the books and records to change the 14 balance. 15 Q When you get a suggestion for an 16 adjusted journal entry from the auditor, do 17 you go back and change the entry in the books 18 of the general ledger for that transaction? 19 A No. 20 Q What do you do instead? 21 A I take the balance sheet items, 22 which is assets, liabilities and equity. I 23 take the final audited balance sheet items, 24 assets, liabilities and equity. I make one 25 journal entry to bring those balances into LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 256</p> <p>2 program. 3 Q So when you get the suggested 4 journal entries from the auditor in this case, 5 Marks, Paneth & Shron, are you the individual 6 that makes the entry on to the general ledger? 7 A Yes. 8 Q So you physically have the papers 9 in review in front of you and review each 10 entry as you make it? 11 A Right. 12 Q So if you see an entry that you 13 disagree with, or you're don't understand or 14 it's just plain wrong, you will question it 15 with Marks, Paneth & Shron or whoever you feel 16 needs to be questioned, is that correct? 17 A Yes. 18 Q Now, I'd like to talk about the 19 bookkeeping that's done at Dalton Management. 20 Who receives the invoice for 21 expenses on behalf of Dalton Management? 22 A The invoices come in. They go to 23 your accounts payable clerk. She sorts them 24 by building. The managers from the building 25 come in each week. They review those LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 257</p> <p>2 invoices. They approve the ones that they 3 feel are correct. They are then entered into 4 the books as a payable and then at a later date with funds available they are paid.</p> <p>5 Q Who enters them into the books as 6 a payable?</p> <p>7 A Veronica Mackenzie.</p> <p>8 Q She is not associated with Marks, 9 Paneth whatsoever?</p> <p>10 A No, she is not.</p> <p>11 Q Who prepares the checks to pay 12 these invoices after they have been approved?</p> <p>13 A The payable 14 clerk, Veronica Mackenzie.</p> <p>15 Q Does Marks, Paneth & Shron have 16 any input as to whether invoices are approved 17 or paid?</p> <p>18 A No.</p> <p>19 Q Tell me about how revenue is 20 received by Dalton Management on behalf of the 21 building?</p> <p>22 A Revenues come in two ways. We 23 send out rent bills. Some tenants return a 24 check along with their bill. It goes directly LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 259</p> <p>2 whatsoever?</p> <p>3 MR. TRAUB: Objection to 4 form.</p> <p>5 A No.</p> <p>6 Q Who receives the bank statements 7 on behalf of Dalton Management and the 8 building it manages?</p> <p>9 A I do.</p> <p>10 I open them, 'cause they come in 11 sealed and do the bank reconciliationis and 12 then they are filed.</p> <p>13 Q Who decided the accounting 14 procedures used at Dalton management?</p> <p>15 A I mostly did.</p> <p>16 Q Now, I am going to switch topics 17 and ask you about the work that Marks, Paneth 18 & Shron was involved in.</p> <p>19 You had testified earlier that 20 Marks, Paneth & Shron provides audit services 21 to various of the buildings managed by Dalton 22 Management, is that correct?</p> <p>23 A Yes.</p> <p>24 Q Do you recall what other services, 25 other than audit services, Marks, Paneth & LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 258</p> <p>2 to the bank and a lock box. Alonzo Rodgers on 3 a daily basis logs in, brings up the 4 information and posts it, which automatically 5 posts to the individual's account, because 6 it's already coded and then sometimes the 7 tenants don't include a payment voucher so 8 that it can't be coded by the bank. So it 9 comes back to us in an overnight packet where 10 he then goes through those checks, put them in 11 and scans them in and then posts them.</p> <p>12 Q Who sends out the rent bills?</p> <p>13 A Dalton Management.</p> <p>14 Q Does Marks, Paneth & Shron have 15 any role in sending out the rent bills?</p> <p>16 A No.</p> <p>17 Q You mentioned Alonzo Rodgers 18 involved in this process?</p> <p>19 A Yes.</p> <p>20 Q Is he involved with Marks, Paneth 21 whatsoever?</p> <p>22 A No.</p> <p>23 Q Is any of the employees you 24 mentioned earlier in your testimony, the six 25 or so affiliated with Marks, Paneth & Shron LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 260</p> <p>2 Shron provided to any of these entities?</p> <p>3 A They do the tax returns, 4 partnership tax return. They do the -- well, 5 they help us with the rent increases. They 6 help us with the RPIE, which is an annual 7 requirement. They help us with the 8 certiaries, which is required to do in order 9 to keep the real estate taxes down and I know 10 that they look at some of the tax consequences 11 of doing certain things, i.e. the \$180,000.</p> <p>12 Q With respect to the tax returns, 13 do you know if any of the entities had ever 14 been audited by any taxing authority?</p> <p>15 A Yes.</p> <p>16 Q What do you recall about that?</p> <p>17 A Umm, I believe Lakeview was 18 audited and that wasn't too long ago. Before 19 that I don't think we had any audits.</p> <p>20 Q Do you know what tax periods were 21 audited in connection with Lakeview?</p> <p>22 A I don't recall.</p> <p>23 Q Do you know what the finding of 24 the audit was in connection with Lakeview?</p> <p>25 A No change. LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 261</p> <p>2 Q So what do you understand no 3 change to mean?</p> <p>4 A No change is that there was no 5 changes to the tax return.</p> <p>6 MR. HAYWOODE: Objection to 7 what he understands it to mean.</p> <p>8 MR. TRAUB: You can answer.</p> <p>9 A When you get a no change from the 10 internal revenue that means that the tax 11 return that you filed will not be changed, so 12 there will be no additional income or expense 13 to the K-1 or changes to the K-1's.</p> <p>14 Q Is it fair to say that the IRS 15 examined the tax returns and concluded that 16 there was nothing incorrect to change?</p> <p>17 MR. HAYWOODE: Objection. There is no indication that the IRS examined every facet of the return they may have sampled like the auditors do.</p> <p>18 MR. TRAUB: Mr. Haywoode, you yourself know that for the last several years that Federal rules allow for objections, but LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 263</p> <p>2 inspect the books and records?</p> <p>3 A I am guessing maybe forty times.</p> <p>4 Q In any of those forty times, did 5 you refuse to provide them access to documents 6 other than what you testified about the 7 personal records?</p> <p>8 A No.</p> <p>9 Q In any of those forty times did 10 they ask to look at documents and were you 11 unable to locate such documents?</p> <p>12 A Yes.</p> <p>13 Q Do you recall the specific 14 instance?</p> <p>15 A The mortgages.</p> <p>16 Q Do you recall any other specific 17 instances?</p> <p>18 A No, just the mortgages was the big 19 item.</p> <p>20 Q In talking about your experience 21 at your prior positions you worked at Hudson 22 River Management.</p> <p>23 A That's correct.</p> <p>24 Q What is your position there?</p> <p>25 A I was the controller and also the LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 262</p> <p>2 there is no speaking objections.</p> <p>3 MR. HAYWOODE: But you 4 didn't listen to me.</p> <p>5 MR. TRAUB: I listened to 6 you.</p> <p>7 MR. HAYWOODE: So I returned 8 the favor.</p> <p>9 I am shorter than your 10 objections. It's an objection to 11 form.</p> <p>12 MR. TRAUB: Thank you.</p> <p>13 A They didn't find anything. I 14 don't remember exactly what you asked, I am 15 sorry.</p> <p>16 Q I asked is it fair to say that the 17 after the IRS reviewed the returns, they found 18 that there was no mistakes or other things 19 that needed to be corrected?</p> <p>20 A There was nothing there to find so 21 they didn't find anything.</p> <p>22 Q With regard to the increase paid 23 my Cameron Pryce & Griffiths, with regard to 24 the increase how many times would you say they 25 came to the offices of Dalton Management to LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 264</p> <p>2 chief operating officer.</p> <p>3 Q What duties did you have at that 4 position?</p> <p>5 A The same as I did here only more 6 so, because there was only two of us taking 7 care of 2,000 tenants.</p> <p>8 Q Prior to that you indicated you 9 worked at an asbestos removal company?</p> <p>10 A Yes.</p> <p>11 Q What were your duties there?</p> <p>12 A Controller.</p> <p>13 Q What did being controller entail 14 at that company?</p> <p>15 A Trying to get them out of a mess. They were over extended. Basically what I have done prior to, for like fifteen years, was work out for real estate companies?</p> <p>19 Q Would it be fair to say for the 20 last twenty-five years or so you've been a 21 controller or chief operating officer for 22 various entities?</p> <p>23 A Yes.</p> <p>24 MR. KELLY: I have no further questions.</p> <p>25 LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 265</p> <p>2 FURTHER EXAMINATION BY</p> <p>3 MR. HAYWOODE:</p> <p>4 Q Is it fair to say that Dalton management, earns about \$500,000.00 a year as manager of the buildings that it functions in for the Seavey's?</p> <p>5 MR. TRAUB: Objection to form.</p> <p>6 You mean the four buildings at issue here?</p> <p>7 Q I am sorry, for the four buildings here in excess of \$510,000.00?</p> <p>8 A Let's see, that is pretty close, about 55.</p> <p>9 Q In terms of your maintenance of accounting records and what not, is it fair to say that most of the requests were made of you, indicating Dalton, were referred to Marks, Paneth & Shron for an answer?</p> <p>10 MR. TRAUB: Objection to form.</p> <p>11 Q Is that fair to say?</p> <p>12 MR. KELLY: Objection to form.</p> <p>13 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 267</p> <p>2 & Shron for the building that they control</p> <p>3 that they relate to would that sound to you be</p> <p>4 a statement of truth or would it sound to be a</p> <p>5 statement of exaggeration?</p> <p>6 MR. TRAUB: Objection to form.</p> <p>7 MR. KELLY: Objection to form.</p> <p>8 A I don't know what other companies do with Bill Jennings. I know that I am doing exactly the same thing for Dalton that I did for River Rental in their 2000 units. I kept books on a cash basis and they put them on an accrual basis at the end of the year and produced a financial statement. They did the tax returns. That's -- you know, that's been the procedure.</p> <p>9 Q Is it not a fact that the accounting cover that's provided to Dalton by Mark Paneth and Shron, enabling it and abetting it, makes it possible for Dalton to take in \$500,000.00 a year when the total accounting obligation is being placed on Marks, Paneth & Shron?</p> <p>10 LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 266</p> <p>2 Q Most of the requests for documentation was forwarded to Marks, Paneth & Shron?</p> <p>3 A They spent days in our office requesting information. One of the very items that you have as an Exhibit, which was the front-line expenditure information was given freely. We provided everything that we had there whenever they asked for it.</p> <p>4 Some things I couldn't find, because I didn't have the mortgage. I didn't have -- there were closing binders. I didn't have access to them.</p> <p>5 Q What percentage of these requests were referred to Marks, Paneth & Shron?</p> <p>6 MR. TRAUB: Objection to form.</p> <p>7 A I don't have a clue what percentage. Out of all the information that they asked for very small.</p> <p>8 Q If I said to you that Mr. William Jennings had testified that it is the habit of not only Dalton, but all management companies to refer all those questions to Marks, Paneth</p> <p>9 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 268</p> <p>2 MR. TRAUB: Objection to form.</p> <p>3 Isn't it a fact.</p> <p>4 That question is so convoluted I am not going to allow you to answer it.</p> <p>5 MR. KELLY: I am going to object to the form as well.</p> <p>6 Q Aren't they making it possible for Dalton to collect \$500,000.00, by virtue of their total covering of every conceivable angle of the tax and accounting responsibilities that Dalton has?</p> <p>7 MR. TRAUB: Same objection.</p> <p>8 Question is so convoluted and compound I am not going to allow you to answer.</p> <p>9 MR. HAYWOODE: Obviously, counsel.</p> <p>10 Q Do you understand the question, sir?</p> <p>11 MR. TRAUB: It's got twenty something angles.</p> <p>12 MR. HAYWOODE: Here we go</p> <p>13 LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 2 with speeches to the record. 3 Q Do you understand the question? 4 A I was told by counsel not to 5 answer. 6 MR. TRAUB: If you want to 7 break your question down to 8 individual pieces. 9 MR. HAYWOOD: No further 10 questions. 11 FURTHER EXAMINATION BY 12 MR. KELLY: 13 Q In any of the inquiries you've 14 had of Marks, Paneth & Shron, have you ever 15 found them to be unresponsive to your 16 inquiries? 17 A No. 18 Q Have you ever had any problem with 19 what Marks, Paneth & Shron has done with any 20 of these entities? 21 A No. 22 Q Have you had any reason to doubt 23 that Marks, Paneth & Shron has been 24 forthcoming, with all the information that was 25 ever asked of them in connection with the LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 2 A N o. 3 MR. HAYWOOD: That is it. 4 MR. TRAUB: Thank you. 5 -000 6 (Whereupon, the deposition 7 of Ronald Dawley was concluded at 8 5:30 p.m.) 9 RONALD DAWLEY 10 11 Subscribed and sworn to 12 before me this ____ day of _____, 2009 13 14 NOTARY PUBLIC 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 Dawley 2 Dalton management entities? 3 A No. 4 MR. KELLY: Thank you. 5 No further questions. 6 FURTHER EXAMINATION BY 7 MR. HAYWOOD: 8 Q Has anyone at Marks, Paneth & 9 Shron ever described Dalton's operation as 10 being deficient and suggested that the 11 Dalton's operation is a lazy one? Has anyone 12 ever suggested that? 13 MR. TRAUB: Again objection 14 to form. 15 Again it's compound. 16 Q I will break that one down. 17 Did anyone ever say that Dalton's 18 performance, in terms of the accounting 19 operation, is deficient to you? 20 A No. 21 Q Did they ever say that the Dalton 22 management's performance is a lazy one, that 23 they refer to questions to us because they 24 don't want to answer them themselves; anyone 25 ever say that to you? LEX REPORTING SERVICE 800-608-6085</p>	<p>1 INDEX 2 WITNESS EXAMINATION BY PAGE 3 R. Dawley Mr. Haywoode 5,265 4 270 5 Mr. Kelly 254, 6 269 7 8 EXHIBITS 9 10 PLAINTIFF'S PAGE 11 1 A letter dated May 16th 61 12 2 A five page list of adjusting journal entries 78 13 3 A communication from Cameron, Pryce & Griffiths to Dalton c/o of N. Seavey 91 14 4 A response to questions posed in Exhibit 3 104 15 5 A Logan Plaza Associates document 132 16 6 The entire housing agreement of 1/13/2000 with Logan Plaza Associates 156 17 7 A retainer agreement for auditing services from Marks, Paneth & Shron 164 18 8 Two sets of requests 169 19 9 A copy of the general ledger expense sheet 191 20 10 One page of journal entries for the fiscal year ending 12/31/06 192 LEX REPORTING SERVICE 800-608-6085</p>

1	273	1	275
2 (Index continued)			
3			
4			
5	<u>PLAINTIFF'S EXHIBITS</u>	<u>PAGE</u>	<u>CERTIFICATE</u>
6	11 An annual financial statements	198	5 I, ANGELA TORREGROSSA, a shorthand
7	12 Invoice # 103442	207	6 reporter and Notary Public within and
8	13 A document showing a check being		7 for the State of New York, do hereby
9	paid for \$5,000.00	208	8 certify:
10	14 2006 financial statement	215	9 That the witness(es) whose
11	15 A mortgage closing	222	10 testimony is hereinbefore set forth
12	16 A billing invoice	222	11 was duly sworn by me, and the foregoing
13	17 A Gray Stone Fanny May settlement	224	12 transcript is a true record of the
14	18 A document pertaining to an		13 testimony given by such witness(es).
15	overage	229	14 I further certify that I am not
16	19 A statement pertaining to		15 related to any of the parties to this
17	Church Home, Logan Plaza and		16 action by blood or marriage, and that I
18	Charles Hill	232	17 am in no way interested in the outcome
19	20 The order to show cause	234	18 of this matter.
20	21 A letter dated 11/25/08	252	19
21	22	20	21 ANGELA TORREGROSSA
22	23	22	23
23	24	24	25
24	25	26	27
25	LEX REPORTING SERVICE	LEX REPORTING SERVICE	LEX REPORTING SERVICE
	800-608-6085	800-608-6085	800-608-6085

#	\$23,022.00 [1] - 225:13 \$23,899.00 [2] - 219:15, 219:18 \$24,000.00 [2] - 196:25, 216:23 \$29,000 [1] - 188:13 \$1,000.00 [2] - 224:11, 225:15 \$10,000.00 [3] - 130:7, 130:8, 216:25 \$100,000.00 [2] - 142:24, 170:23 \$100,368.00 [1] - 170:20 \$108,000.00 [13] - 127:24, 128:16, 129:3, 129:4, 130:19, 131:4, 193:11, 196:3, 200:16, 201:11, 201:15, 206:18, 209:7 \$108,525.45 [1] - 191:23 \$12,476.00 [1] - 176:5 \$12,476.03 [2] - 174:7, 174:8 \$125,000.00 [1] - 208:5 \$140,000.00 [1] - 11:12 \$15,000 [1] - 222:5 \$15,000.00 [6] - 208:16, 208:25, 216:11, 219:24, 222:8, 273:22 \$180,000 [12] - 34:19, 38:9, 39:17, 60:6, 133:23, 142:5, 143:3, 143:18, 167:4, 190:22, 212:14, 260:11 \$180,000.00 [9] - 27:14, 28:2, 29:23, 32:24, 34:14, 39:7, 59:15, 61:23, 133:20 \$181,000.00 [6] - 137:16, 141:25, 151:7, 166:19, 167:12, 168:5 \$181,927.02 [1] - 133:17 \$22,000.00 [5] - 224:12, 224:18, 225:22, 226:12, 228:17 \$23,000.00 [2] - 216:23, 224:11	'97 [1] - 220:24 '98 [1] - 220:24 \$29,915.16 [1] - 187:4 \$3,811.00 [1] - 225:10 \$32,588.00 [1] - 225:9 \$32,999 [1] - 219:19 \$322,000.00 [1] - 197:3 \$34,000.00 [14] - 127:13, 128:17, 131:17, 190:19, 195:6, 196:16, 200:17, 201:17, 201:20, 203:6, 203:8, 206:17, 212:15, 216:24 \$34,155.00 [1] - 199:15 \$35,000.00 [1] - 231:16 \$370.00.00 [1] - 101:6 \$372,020.00 [1] - 79:15 \$4,000,000,000.00 [4] - 62:22, 72:13, 74:7, 74:10 \$4,205.00 [1] - 178:6 \$44.00 [1] - 157:20 \$5,000.00 [3] - 129:9, 129:23, 273:8 \$500,000.00 [3] - 265:5, 267:23, 268:11 \$500.00 [3] - 126:18, 126:20, 126:23 \$510,000.00 [1] - 265:13 \$59,000.00 [1] - 217:4 \$59,977.00 [1] - 219:19 \$7,555.00 [1] - 225:12 \$82,000.00 [10] - 194:4, 196:13, 197:14, 197:18, 200:6, 200:25, 201:16, 202:7, 204:15, 207:6 \$82,900.00 [1] - 217:3 \$82,909.00 [2] - 193:21, 194:10 \$9,000 [1] - 176:6 \$9,084.60 [1] - 174:9 \$90,000.00 [2] - 139:8, 143:23	11/25/08 [1] - 273:17 11/6/2000 [1] - 220:7 11225 [1] - 3:6 11th [3] - 105:7, 105:13, 106:4 12 [8] - 169:6, 180:2, 180:6, 207:25, 220:4, 220:13, 222:7, 273:6 03 [1] - 232:8 06 [7] - 235:13, 235:14, 241:20, 241:21, 241:24, 242:4, 242:5 1 [11] - 26:11, 61:8, 61:11, 61:15, 90:22, 90:24, 91:5, 92:13, 92:15, 94:15, 272:11 1/13-B [4] - 159:12, 162:9, 162:10, 164:7 132 [1] - 272:17 14 [3] - 215:16, 215:19, 273:9 15 [7] - 222:24, 223:3, 223:18, 224:6, 225:2, 225:7, 273:10 156 [1] - 272:19 15th [3] - 25:10, 105:25, 106:5 16 [5] - 24:9, 222:24, 223:4, 224:7, 273:11 16,753 [1] - 231:21 164 [1] - 272:21 169 [1] - 272:22 16th [3] - 61:12, 61:13, 272:11 17 [7] - 221:25, 223:24, 224:3, 226:13, 228:6, 252:22, 273:12 174 [1] - 274:6 175 [1] - 10:2 18 [6] - 229:12, 229:15, 229:18, 232:11, 273:13 181,927.02 [1] - 136:17 19 [9] - 232:22, 233:2, 234:3, 235:8, 235:11, 236:18, 241:6, 241:19, 273:14 191 [1] - 272:23 192 [1] - 272:25 1967 [4] - 17:13, 43:6, 65:16, 65:19 198 [1] - 273:5 1997 [3] - 135:4 1998 [3] - 135:5, 135:6 1999 [3] - 6:16, 6:18, 220:24 1st [3] - 89:19, 89:24, 255:4	2 1
---	---	--	--	--------

LEX REPORTING SERVICE

800-608-6085

<p>252:20, 252:22 2009 [2] - 1:23, 271:12 207 [1] - 273:6 208 [1] - 273:8 20th [3] - 25:7, 241:24, 242:4 21 [4] - 252:7, 252:10, 252:20, 273:17 215 [1] - 273:9 218 [1] - 273:22 21st [1] - 10:5 22 [1] - 80:7 221 [1] - 49:12 222 [2] - 273:10, 273:11 224 [1] - 273:12 229 [1] - 273:13 23 [2] - 219:17 232 [1] - 273:15 234 [1] - 273:16 24 [1] - 1:23 249 [1] - 273:24 24th [1] - 220:14 25 [4] - 209:8, 219:18, 252:8, 252:13 252 [1] - 273:17 254 [1] - 272:6 26 [1] - 198:24 269 [1] - 272:7 27 [1] - 198:24 27,000 [2] - 231:22, 232:2 270 [1] - 272:5 28,000 [1] - 232:2 2800 [2] - 7:18 28th [3] - 6:25, 7:2, 207:8</p>	4 <p>4 [9] - 80:21, 80:22, 92:23, 93:14, 104:9, 104:13, 106:3, 191:4, 272:15 40 [1] - 12:6 401 [1] - 5:13 45 [1] - 12:4 48 [2] - 56:18, 56:20 4th [1] - 3:17</p>	71 [1] - 3:5 71923 [1] - 1:25 78 [1] - 272:12 8 <p>8 [21] - 93:5, 154:22, 156:19, 156:22, 156:24, 157:5, 162:15, 163:24, 169:9, 169:12, 179:25, 182:5, 185:6, 194:20, 194:22, 194:24, 194:25, 219:16, 222:23, 223:21, 272:22 80 [1] - 11:24 800,000.00 [1] - 247:19 83 [2] - 209:7, 216:22</p>	access [7] - 8:11, 8:12, 23:19, 121:7, 121:8, 263:5, 266:14 accommodate [1] - 68:8 accordance [2] - 43:13, 49:12 according [2] - 137:12, 206:8 account [39] - 25:13, 25:14, 88:4, 88:5, 88:14, 88:24, 89:11, 89:13, 89:15, 89:16, 90:15, 90:18, 101:2, 103:11, 107:19, 113:8, 115:5, 118:24, 118:25, 153:3, 160:14, 170:20, 193:21, 193:22, 193:23, 197:5, 204:24, 223:13, 247:6, 247:10, 247:23, 248:4, 248:17, 249:8, 250:8, 250:10, 250:11, 258:5 accountant [40] - 23:24, 28:23, 29:21, 42:19, 42:20, 43:2, 63:13, 63:16, 76:4, 94:2, 96:20, 97:6, 97:14, 97:22, 99:3, 100:6, 101:16, 102:20, 107:10, 107:12, 107:15, 107:18, 107:22, 108:14, 108:24, 109:8, 109:11, 112:13, 139:11, 140:3, 144:22, 163:19, 227:12, 250:25, 251:17, 251:24, 252:3, 253:4, 253:11 accountant's [1] - 108:18 accountants [1] - 222:15 accounting [49] - 15:20, 16:2, 16:16, 31:22, 33:13, 33:25, 41:9, 43:14, 43:22, 44:11, 44:16, 62:17, 65:4, 65:15, 65:18, 98:15, 98:16, 98:19, 98:23, 99:18, 99:22, 100:7, 100:10, 100:20, 100:22, 111:2, 112:12,	140:14, 142:14, 142:15, 144:15, 193:10, 194:11, 196:18, 199:14, 204:6, 206:6, 216:24, 221:21, 224:7, 253:2, 253:22, 259:13, 265:17, 267:20, 267:24, 268:13, 270:18 Accounting [1] - 253:20 accounts [43] - 11:5, 23:2, 27:12, 66:18, 71:3, 71:7, 71:8, 73:21, 83:24, 84:21, 84:24, 85:10, 85:13, 87:11, 87:25, 89:21, 90:6, 92:24, 93:6, 94:4, 94:8, 94:10, 108:22, 111:12, 111:19, 112:2, 112:25, 117:10, 117:22, 118:24, 119:20, 121:2, 159:25, 217:15, 217:19, 219:22, 247:18, 248:19, 248:20, 249:23, 250:2, 250:13, 256:23 accrual [37] - 73:9, 73:17, 74:6, 85:19, 87:8, 92:25, 93:3, 93:21, 94:3, 94:5, 94:17, 95:9, 95:11, 103:2, 103:5, 111:3, 111:15, 111:17, 112:12, 112:15, 113:6, 113:19, 115:16, 122:11, 122:18, 122:20, 123:3, 123:18, 204:23, 209:21, 217:21, 219:5, 220:2, 220:3, 225:15, 267:15 accruals [3] - 72:23, 123:5, 144:23 accrued [17] - 93:2, 94:10, 114:8, 188:2, 202:5, 202:11, 202:22, 204:6, 204:9, 205:9, 217:8, 217:23, 218:5, 218:20, 222:16, 223:9, 223:14 accumulated [4] - 81:18, 93:4, 122:2,
3 <p>3 [19] - 3:17, 79:16, 79:17, 80:19, 80:20, 91:4, 91:10, 92:23, 93:12, 94:14, 104:7, 104:11, 104:18, 104:22, 105:15, 156:9, 223:21, 272:13, 272:16 30 [1] - 224:13 303 [1] - 10:5 30th [2] - 228:20, 229:4 31 [1] - 165:4 32BJ [1] - 162:2 34 [2] - 6:22, 209:9 3rd [4] - 91:6, 169:7, 191:5, 229:13</p>	6 <p>6 [9] - 81:5, 81:6, 93:2, 154:24, 156:6, 156:11, 156:15, 156:18, 272:18 6/9/2005 [1] - 228:16 60 [2] - 11:15, 12:2 61 [1] - 272:11 6204 [2] - 193:22, 193:23 6220 [1] - 193:21 6530 [1] - 170:21</p>	6 <p>6 [9] - 81:5, 81:6, 93:2, 154:24, 156:6, 156:11, 156:15, 156:18, 272:18 6/9/2005 [1] - 228:16 60 [2] - 11:15, 12:2 61 [1] - 272:11 6204 [2] - 193:22, 193:23 6220 [1] - 193:21 6530 [1] - 170:21</p>	A <p>A&S [2] - 140:24, 142:2 a.m [1] - 1:24 a/k/a [1] - 1:5 abetting [1] - 267:22 able [13] - 22:18, 25:20, 26:9, 62:23, 75:23, 90:2, 92:6, 92:9, 92:11, 94:13, 112:13, 222:10, 255:10 above-entitled [1] - 2:3 Abraham [1] - 139:11 abridged [1] - 241:6 Absolutely [2] - 49:8, 236:10 acceptable [3] - 158:5, 159:14, 213:13 acceptance [1] - 82:21 accepted [2] - 201:4, 214:7</p>	7 <p>7 [7] - 93:3, 164:13, 164:18, 164:23, 222:23, 223:18, 272:20</p>
<p>71 of 95 sheets</p>	<p>LEX REPORTING SERVICE 800-608-6085</p>	<p>800-608-6085</p>	<p>04/16/2009 11:23:13 AM</p>	<p>2</p>

202:6	81:17, 81:19, 81:25,	154:18, 154:25,	113:10, 114:15,	215:5, 215:6, 215:8, 3
accumulation [1] - 70:21	83:19, 84:13, 85:4,	155:3, 155:16,	115:6, 120:3,	217:6, 218:19,
acquiesced [1] - 151:23	85:8, 86:18, 86:20,	155:20, 155:21,	125:10, 125:14,	235:23, 236:5,
acquiescing [1] - 214:14	87:6, 87:7, 87:21,	156:8, 156:13,	128:2, 129:22,	240:3, 240:23,
acquired [1] - 34:16	101:10, 101:23,	157:13, 159:10,	137:16, 139:2,	243:12, 243:14,
acting [1] - 97:14	102:16, 103:4,	162:13, 164:2,	139:4, 187:4,	246:4, 251:10,
action [s] - 2:3, 60:8,	108:11, 111:21,	164:5, 164:14,	187:13, 187:19,	261:8, 265:20,
174:15, 190:12,	113:6, 201:4, 209:5,	164:19, 165:7,	188:13, 199:7,	268:7, 268:18,
275:16	212:13, 213:5,	165:9, 165:19,	200:15, 203:18,	269:5, 270:24
activity [4] - 67:9,	213:23, 216:20,	167:15, 167:19,	205:8, 208:11,	answered [19] - 15:12,
87:8, 122:7, 203:22	217:13, 217:14,	167:20, 168:3,	209:4, 217:5,	33:5, 48:11, 84:17,
acts [1] - 166:4	219:16, 220:2, 220:3	213:24, 213:25,	219:14, 219:23,	84:19, 131:7,
actual [s] - 86:21,	administer [1] - 4:18	272:18, 272:20	223:9, 229:25,	131:10, 138:7,
174:9, 180:10,	admission [1] - 51:6	ahead [s] - 27:3,	231:18, 231:23,	138:11, 138:21,
205:12, 227:5	admit [1] - 223:23	27:11, 28:20, 31:22,	239:13, 247:21,	141:16, 145:11,
actuality [s] - 73:14,	advertised [1] -	55:7, 126:14,	248:4, 249:9, 273:23	145:13, 148:2,
86:6, 90:5, 153:20,	172:10	222:10, 224:22	amounts [s] - 125:5,	148:6, 240:9, 241:2,
190:21	advice [s] - 59:7,	allegation [1] - 177:6	191:19, 203:2	251:5, 251:20
ad [1] - 151:15	134:9, 134:15	allege [1] - 176:22	analysis [4] - 196:20,	answering [s] - 77:19,
ADAM [1] - 3:22	advise [2] - 163:22	allocate [1] - 158:12	197:24, 198:3, 198:8	163:10, 211:23
add [4] - 79:24, 79:25,	advised [2] - 47:3,	allocated [2] - 238:10,	AND [16] - 1:4, 1:4,	anthropology [1] -
102:6, 102:7	58:21	238:11	1:6, 1:9, 1:10, 1:11,	197:15
added [1] - 111:24	advisement [s] -	allocation [s] -	1:12, 1:13, 1:13,	anticipated [1] - 227:2
addition [s] - 129:9,	173:6, 173:20,	233:22, 234:15,	1:14, 1:15, 1:16,	anticipating [1] -
158:14, 193:19	181:11, 186:3,	238:3, 238:15, 242:6	1:16, 4:4, 4:10, 4:15	114:18
additional [7] - 16:11,	218:25	allocations [1] -	ANGELA [2] - 275:5,	appear [s] - 106:11,
16:12, 183:12,	affairs [2] - 5:16,	232:14	275:21	183:13, 184:3,
186:13, 186:19,	109:18	allow [11] - 142:16,	Angela [1] - 2:5	201:23, 201:24,
186:22, 261:12	affidavit [1] - 25:5	147:6, 235:22,	angle [1] - 268:13	228:23, 232:9,
address [1] - 5:11	affiliated [1] - 258:25	240:2, 244:13,	angles [1] - 268:24	252:23
addressed [3] -	afternoon [1] - 254:5	244:20, 246:6,	annual [4] - 198:17,	appeared [2] - 144:8,
105:20, 221:2, 226:5	agencies [6] - 125:9,	246:22, 261:25,	198:25, 260:6, 273:5	183:4
adjourned [1] - 132:3	158:6, 159:6,	268:7, 268:18	answer [90] - 11:11,	appearing [1] - 226:12
adjust [6] - 75:7, 75:8,	168:16, 199:23,	allowance [1] - 93:5	11:20, 15:7, 20:6,	application [2] -
83:23, 84:25, 87:16,	212:8	allowed [7] - 22:22,	34:7, 39:21, 42:5,	129:7, 184:23
93:20	agency [3] - 160:14,	145:19, 148:5,	44:3, 44:19, 48:5,	applies [1] - 157:15
adjusted [8] - 75:12,	168:6, 171:20	157:19, 157:21,	49:2, 49:6, 49:15,	apply [s] - 19:8,
88:9, 89:17, 112:14,	agent [3] - 19:3,	158:11, 245:25	49:17, 49:24, 50:11,	157:17, 167:23
187:21, 219:8,	107:17, 159:19	allowing [1] - 240:22	51:3, 51:10, 51:19,	applying [1] - 31:15
250:22, 254:16	agents [4] - 63:18,	almost [4] - 33:9,	51:22, 51:25, 53:8,	appreciate [2] - 98:8,
adjusting [8] - 25:13,	64:15, 155:3, 155:9	110:23, 169:18,	53:12, 53:14, 53:22,	141:17
78:11, 78:18, 193:5,	ago [12] - 31:4, 33:10,	170:13	54:2, 54:10, 54:13,	appreciation [1] -
254:6, 254:9,	46:12, 50:13, 59:11,	alone [1] - 101:3	54:22, 54:24, 55:10,	101:7
255:17, 272:12	59:14, 67:24, 96:18,	Alonzo [6] - 10:17,	55:23, 57:4, 57:13,	approached [4] -
Adjustment [1] -	126:17, 229:5,	12:3, 117:23,	57:15, 57:20, 58:4,	21:10, 31:24, 32:6,
219:16	249:16, 260:18	169:21, 258:2,	60:16, 73:17, 77:7,	176:7
adjustment [14] -	agree [7] - 84:25,	258:17	77:12, 77:13, 77:16,	appropriate [6] - 15:4,
80:10, 80:13, 80:15,	108:16, 111:20,	ALSO [1] - 3:21	87:4, 95:4, 98:2,	19:9, 45:21, 119:24,
93:2, 94:6, 110:25,	144:14, 144:21,	altered [1] - 235:25	103:18, 103:21,	145:24, 183:10
111:2, 192:4, 194:3,	207:13, 212:12	alternative [4] - 28:20,	105:24, 139:23,	approval [s] - 129:24,
196:5, 209:9, 217:5,	agreed [1] - 152:14	34:23, 37:4, 59:7	141:18, 143:10,	130:9, 130:11
219:16, 219:17	AGREED [3] - 4:4,	ambiguous [2] -	145:4, 146:13,	approve [s] - 95:23,
adjustments [42] -	4:11, 4:16	15:10, 15:15	146:14, 147:6,	96:11, 97:10,
71:5, 73:23, 74:3,	agreement [40] -	amortization [4] -	148:8, 149:6, 150:9,	125:19, 249:2, 257:2
76:3, 76:15, 79:6,	26:19, 30:15, 30:20,	72:22, 79:9, 93:4,	157:12, 160:25,	approved [s] - 96:3,
79:7, 79:23, 80:8,	30:24, 83:25, 84:21,	95:16	174:22, 174:25,	129:18, 172:10,
81:8, 81:12, 81:15,	125:24, 141:3,	amount [s] - 35:4,	175:23, 176:7,	257:13, 257:17
	141:7, 143:15,	36:25, 37:8, 37:15,	202:25, 205:16,	approves [1] - 96:8
	143:16, 144:9,	38:2, 60:19, 72:14,	207:19, 211:21,	April [1] - 135:5
	144:10, 152:19,	79:21, 102:10,	214:24, 214:25,	area [6] - 7:8, 7:15,

LEX REPORTING SERVICE

800-608-6085

7:24, 7:25, 15:20, 23:5	176:17, 176:24, 177:10, 177:24, 178:11, 179:4, 179:8, 187:10, 191:12, 230:25, 231:8, 239:3	210:22, 227:24 Auditors [2] - 1:18, 110:12 auditors [13] - 118:5, 120:9, 124:13, 127:4, 190:20,	67:3, 67:4, 68:9, 68:12, 68:16, 69:4, 69:7, 69:15, 69:21, 69:25, 70:6, 70:11, 73:20, 73:22, 73:24, 74:2, 75:7, 75:8, 75:13, 75:24, 76:20, 83:24, 84:20, 84:24, 85:13, 87:14, 87:17, 88:11, 88:25, 89:14, 89:16, 89:20, 95:8,	249:15 beginning [6] - 27:22, 85:12, 88:10, 95:8, 241:16, 255:3 behalf [5] - 239:10, 250:15, 256:21, 257:21, 259:7 below [1] - 225:13 benefits [1] - 159:20 best [2] - 49:18, 187:18 Bethune [1] - 12:16 better [1] - 67:25 Better [1] - 141:19 between [15] - 4:5, 8:8, 30:15, 38:11, 50:5, 62:22, 65:5, 72:14, 88:18, 98:22, 143:16, 162:15, 169:19, 185:13, 214:4 Between [2] - 170:10, 210:6 bid [2] - 172:7, 172:9 big [1] - 263:18 Bill [19] - 24:23, 46:2, 46:6, 46:8, 46:16, 46:20, 46:23, 47:12, 47:22, 48:2, 48:8, 48:20, 56:7, 58:21, 58:24, 137:10, 137:14, 253:3, 267:11 bill [11] - 19:4, 64:16, 123:6, 174:7, 174:9, 207:11, 220:5, 221:11, 224:11, 226:21, 257:25 Bill's [1] - 60:18 billed [7] - 123:6, 218:21, 221:21, 225:9, 227:6, 228:25, 273:22 billing [7] - 222:3, 222:5, 222:15, 223:2, 224:7, 224:23, 273:11 billings [2] - 22:24, 220:25 bills [4] - 64:17, 257:24, 258:12, 258:15 binders [1] - 266:13 bit [1] - 240:20 BJ [7] - 65:8, 67:7, 67:17, 68:6, 72:18, 123:21, 255:25 blanket [1] - 103:6 blood [1] - 275:16 Bloomingdales [2] -	
argue [4] - 145:15, 146:9, 147:12, 163:4	Attorney [1] - 3:4	201:7, 205:22, 206:2, 210:12, 251:14, 251:24, 252:3, 261:21	75:13, 75:24, 76:20, 83:24, 84:20, 84:24, 85:13, 87:14, 87:17, 88:11, 88:25, 89:14, 89:16, 89:20, 95:8,	4	
argued [1] - 244:2	attorney [6] - 4:14, 240:10, 243:18, 243:21, 243:23, 245:17	audits [3] - 210:20, 239:18, 260:19	117:9, 213:24, 216:20, 219:8,		
arguing [1] - 53:19	attorney/client [3] -	August [1] - 207:8	219:18, 222:16, 225:12, 254:14, 254:21, 254:23, 255:3, 255:4		
arise [1] - 151:22	attorneys [2] - 4:5, 10:24	authority [4] - 118:5, 162:5, 162:10, 260:14	balances [12] - 67:12, 69:6, 70:20, 74:22, 83:24, 84:3, 87:15, 109:24, 110:3, 254:25		
arrear [1] - 228:21	Attorneys [2] - 3:10, 3:16	Avenue [3] - 3:11, 5:13, 6:22	bank [6] - 11:3, 22:23, 258:2, 258:8, 259:6, 259:11		
Art [1] - 16:13	audit [40] - 21:12, 21:20, 23:11, 69:14, 69:17, 69:24, 69:25, 71:14, 71:19, 71:21, 87:9, 88:9, 95:5, 95:7, 97:11, 98:17, 98:20, 100:12, 114:3, 119:5, 119:6, 129:5, 136:5, 170:8, 192:2, 195:16, 201:21, 201:22, 201:23, 209:8, 210:9, 213:25, 214:2, 216:23, 220:8, 220:11, 255:2, 259:20, 259:25, 260:24	AVERY [1] - 1:13	Bar [1] - 244:8		
Arts [1] - 17:12	audited [10] - 110:16, 111:13, 126:25, 157:24, 159:5, 212:5, 254:23, 260:14, 260:18, 260:21	Avery [5] - 13:22, 31:9, 32:5, 32:18, 183:15	base [1] - 189:17		
AS [8] - 1:4, 16:1, 19: 1:11, 1:12, 1:13, 1:14, 1:14	auditing [11] - 98:23, 99:18, 99:21, 127:7, 164:14, 164:20, 194:13, 194:18, 204:7, 227:12, 272:20	baseball [2] - 35:10, 35:11	baseball [2] - 35:10, 35:11		
assume [7] - 89:8, 120:11, 134:22, 183:19, 225:2, 225:7, 251:23	auditor [20] - 76:2, 100:8, 107:25, 108:4, 108:6, 108:15, 108:18, 109:17, 109:19, 109:22, 116:3, 125:23, 125:25, 129:10, 140:4, 214:6, 227:11, 251:2, 254:16, 256:4	Bachelor [1] - 17:12	based [3] - 108:9, 206:3, 210:20		
assumed [2] - 247:24, 248:6	auditor's [6] - 119:7, 119:17, 205:21	Bachelors [2] - 16:10, 16:13	basic [1] - 23:10		
Assumes [1] - 42:2		backup [1] - 29:22	basis [42] - 25:11, 46:4, 72:19, 73:2, 73:10, 73:16, 73:17, 85:18, 85:19, 86:3, 87:5, 87:8, 87:9, 90:16, 90:19, 92:19, 94:17, 95:9, 97:9, 101:8, 111:15, 111:18, 113:5, 121:23, 122:8, 122:11, 122:18, 122:19, 122:20, 123:3, 123:12, 123:16, 123:22, 124:19, 124:21, 126:21, 204:2, 217:21, 258:3, 267:14, 267:15	basic [42] - 25:11, 46:4, 72:19, 73:2, 73:10, 73:16, 73:17, 85:18, 85:19, 86:3, 87:5, 87:8, 87:9, 90:16, 90:19, 92:19, 94:17, 95:9, 97:9, 101:8, 111:15, 111:18, 113:5, 121:23, 122:8, 122:11, 122:18, 122:19, 122:20, 123:3, 123:12, 123:16, 123:22, 124:19, 124:21, 126:21, 204:2, 217:21, 258:3, 267:14, 267:15	
assumes [4] - 42:15, 44:4, 44:8, 45:2		backwards [1] -	bear [1] - 24:15		
assuming [4] - 20:3, 102:6, 191:2, 221:20		202:11	bears [1] - 207:8		
Assuming [1] - 243:17		badgering [2] - 146:2, 150:8	becomes [1] - 28:18		
attached [2] - 76:17, 276:5		Baer [17] - 50:15, 50:16, 50:24, 52:11, 58:9, 58:12, 174:16, 175:14, 178:22, 179:6, 180:19, 181:5, 181:9, 185:9, 185:12, 185:17, 186:7	Bedford [2] - 18:2, 18:4		
attend [1] - 224:20		Baer's [2] - 184:14, 186:16	began [2] - 20:17, .88:19		
attention [25] - 92:3, 116:22, 117:5, 133:11, 133:18, 134:8, 135:23, 154:25, 157:6, 165:23, 166:19, 169:16, 174:5,		balance [56] - 27:22, 64:19, 64:20, 64:24, 65:2, 65:6, 65:13, 65:23, 66:17, 66:23,	begin [4] - 121:3, 130:25, 188:18,		

139:12, 140:24 Bob [1] - 183:15 bona [1] - 220:15 bonus [1] - 126:18 booked [2] - 213:13, 213:22 bookkeeping [3] - 155:4, 159:24, 256:19 books [97] - 19:10, 19:14, 19:19, 21:4, 21:8, 22:2, 22:8, 27:24, 28:14, 28:16, 28:21, 29:17, 30:8, 30:12, 32:25, 33:10, 35:2, 36:25, 37:16, 38:3, 42:11, 45:16, 46:11, 59:4, 59:10, 60:20, 60:21, 60:24, 61:24, 62:23, 63:21, 63:25, 66:19, 71:2, 71:12, 71:14, 71:19, 72:10, 72:19, 73:2, 73:15, 74:5, 74:14, 74:20, 75:4, 75:6, 81:22, 83:22, 84:4, 84:9, 84:12, 85:8, 85:12, 86:21, 86:22, 86:23, 87:5, 87:7, 88:7, 88:8, 88:13, 89:19, 90:17, 92:24, 93:21, 94:3, 94:4, 102:25, 107:20, 108:8, 110:13, 111:14, 112:6, 113:5, 122:11, 126:6, 130:18, 131:3, 138:24, 139:14, 143:21, 143:22, 152:15, 159:2, 187:20, 188:13, 213:24, 222:2, 239:18, 252:24, 254:13, 254:17, 257:4, 257:6, 263:2, 267:14 born [2] - 153:14, 155:9 Boston [2] - 33:21, 198:13 bought [1] - 68:6 bound [1] - 166:22 box [3] - 244:2, 244:3, 258:2 boxes [1] - 185:15 brackets [8] - 180:7, 180:12, 180:15, 181:18, 182:11, 184:10, 184:13, 185:7	Brandon [1] - 17:18 Break [1] - 214:20 break [10] - 124:23, 128:13, 214:20, 215:9, 215:11, 216:3, 226:14, 248:9, 269:7, 270:16 breakdown [1] - 68:5 briefly [1] - 166:18 bring [1] - 254:25 brings [1] - 258:3 broken [1] - 111:16 broker [1] - 182:21 brokers [2] - 176:21, 182:13 Brooklyn [1] - 3:6 Brothers [2] - 7:12, 7:14 brought [2] - 46:13, 177:24 budget [1] - 228:19 budgets [1] - 229:7 building [18] - 160:23, 161:23, 161:25, 162:3, 163:2, 171:3, 171:4, 171:16, 172:16, 176:16, 177:22, 241:24, 242:12, 256:24, 257:22, 259:8, 267:2 buildings [16] - 12:8, 14:10, 83:6, 100:21, 172:21, 239:12, 239:20, 239:23, 242:5, 242:6, 259:21, 265:6, 265:10, 265:12, 274:6 burden [1] - 173:14 business [1] - 227:12 buy [1] - 172:17 BY [9] - 3:6, 3:12, 3:18, 5:6, 254:3, 265:2, 269:11, 270:6, 272:4	CAMERON [1] - 3:21 Cameron [35] - 21:11, 21:18, 22:5, 28:23, 62:13, 62:20, 65:23, 67:10, 70:10, 72:8, 75:17, 76:23, 77:4, 88:19, 91:8, 91:23, 106:8, 108:25, 110:22, 112:17, 113:22, 115:24, 116:23, 117:16, 117:20, 118:14, 119:14, 120:12, 169:19, 174:10, 178:20, 187:5, 221:21, 262:23, 272:13 Cameron's [1] - 65:6 cancelled [4] - 22:24, 178:8, 178:17, 231:13 capacity [3] - 6:17, 17:21, 71:16 capital [14] - 25:13, 38:21, 87:24, 88:5, 88:14, 88:24, 89:11, 89:13, 89:15, 89:16, 90:5, 90:15, 90:18, 103:11 Caption [1] - 1:21 caption [1] - 196:18 captions [1] - 196:17 Cardinal's [1] - 141:23 Care [1] - 91:25 care [8] - 47:9, 107:20, 123:4, 123:5, 143:20, 144:4, 187:16, 264:7 carried [3] - 27:23, 28:13, 34:15 carry [2] - 38:5, 139:14 case [7] - 24:11, 58:9, 108:23, 116:18, 118:13, 120:4, 256:4 cases [1] - 10:24 cash [39] - 38:10, 38:20, 47:6, 72:19, 73:2, 73:16, 85:18, 86:3, 87:5, 90:16, 90:19, 92:25, 93:3, 93:21, 94:5, 95:9, 103:2, 103:5, 111:3, 111:18, 112:12, 112:14, 113:5, 121:23, 122:8, 122:19, 123:2, 123:12, 123:14, 123:16, 123:22, 124:21, 144:24,	187:8, 195:19, 204:2, 228:20, 229:5, 267:14 categories [6] - 221:13, 221:14, 221:17, 221:19, 222:9 categorization [1] - 233:6 categorizations [1] - 221:2 categorizing [1] - 14:4 category [5] - 160:3, 161:15, 194:5, 203:23, 222:11 caught [1] - 126:19 CENTRAL [1] - 1:4 central [4] - 154:2, 157:10, 161:16, 238:17 checks [12] - 22:24, 64:11, 113:16, 115:11, 121:8, 121:9, 176:21, 178:8, 203:17, 231:13, 257:12, 258:10 CHIEF [1] - 1:16 chief [7] - 6:13, 6:19, 20:25, 96:13, 96:15, 264:2, 264:21 chose [2] - 120:25, 123:21 Church [10] - 12:13, 13:17, 126:25, 157:16, 171:6, 197:4, 231:4, 232:24, 234:3, 273:15 CHURCH [3] - 1:6, 1:12, 1:14 circumstance [1] - 153:21 circumstances [1] - 153:23 city [1] - 65:10 claim [8] - 29:4, 142:5, 142:17, 143:3, 143:6, 151:9, 176:4, 178:5 claims [1] - 220:16 clarification [1] - 77:24 clarified [1] - 77:13 clarify [7] - 15:11, 77:2, 77:21, 78:3, 170:3, 180:9, 215:8 clarifying [1] - 15:6 classification [4] - 121:5, 199:14, 201:25, 206:4 classifications [1] -	5
--	---	--	---	---

187:17 classified [3] - 119:24, 139:4, 200:24 classify [2] - 139:5, 207:3 cleaning [1] - 5:24 clear [4] - 53:22, 77:22, 78:5, 145:25 clearer [1] - 66:15 clearly [2] - 52:12, 166:15 clerical [2] - 155:4, 159:24 clerk [5] - 11:5, 160:2, 256:23, 257:14, 257:15 client [3] - 237:9, 245:24, 248:10 client's [1] - 221:25 clients [4] - 67:19, 183:3, 183:13, 185:14 close [1] - 265:14 closed [3] - 8:22, 9:3, 226:24 closing [13] - 23:18, 26:23, 187:14, 197:2, 222:25, 223:19, 224:12, 226:4, 226:18, 226:23, 227:2, 266:13, 273:10 clue [1] - 266:19 code [2] - 208:8, 208:9 coded [3] - 255:23, 258:6, 258:8 codes [1] - 208:6 Cohen [1] - 7:12 COHEN [1] - 7:14 collect [3] - 19:4, 64:15, 268:11 collected [1] - 140:7 colloquy [1] - 146:23 column [1] - 135:24 comb [1] - 127:3 combination [1] - 144:3 comfortable [1] - 245:7 coming [11] - 18:8, 28:3, 31:12, 102:7, 116:18, 122:25, 178:7, 181:24, 189:16, 207:13, 213:5 commenced [1] - 237:19 comment [1] - 45:2 commentary [1] - 108:19	commenting [1] - 66:11 comments [4] - 182:8, 182:18, 195:5, 210:16 Committee [3] - 61:3, 61:19, 61:22 common [2] - 8:2, 163:21 communicate [1] - 82:20 communicated [2] - 47:11, 81:16 communication [11] - 25:8, 25:16, 90:21, 91:7, 91:13, 91:22, 111:6, 116:23, 166:12, 214:4, 272:13 communicative [1] - 82:8 companies [18] - 18:24, 22:3, 29:3, 29:7, 63:13, 63:17, 63:19, 63:21, 65:9, 68:2, 68:3, 123:11, 158:8, 172:22, 223:14, 264:18, 266:24, 267:10 company [32] - 16:17, 16:19, 17:9, 17:14, 18:2, 28:5, 28:8, 34:16, 38:6, 65:9, 66:24, 67:9, 72:21, 73:15, 74:4, 125:7, 126:21, 143:19, 144:5, 153:15, 165:11, 166:6, 166:12, 166:17, 171:9, 171:19, 171:21, 177:23, 248:19, 264:9, 264:14 COMPANY [6] - 1:5, 1:13, 1:15, 1:16, 1:17, 1:17 company's [2] - 18:16, 18:17 compare [2] - 193:8, 193:11 compared [1] - 72:11 compensated [2] - 117:12, 117:14 compensation [4] - 159:20, 160:10, 160:19, 174:6 compile [2] - 121:15, 121:21 complete [4] - 26:25, 69:17, 124:4, 255:22	completely [1] - 241:17 completing [2] - 31:19, 69:16 compliance [3] - 10:9, 117:25, 159:25 complies [1] - 228:3 comply [3] - 25:20, 26:10, 84:12 composed [1] - 124:13 compound [3] - 249:14, 268:17, 270:15 conceivable [1] - 268:12 concern [2] - 183:23, 193:13 concerned [3] - 76:9, 167:6, 239:8 concerning [11] - 5:16, 103:20, 135:17, 166:8, 166:13, 170:19, 174:6, 175:15, 176:18, 177:22, 233:21 conclude [3] - 136:6, 136:11, 203:6 concluded [2] - 261:15, 271:7 conclusion [17] - 41:13, 41:16, 41:24, 42:14, 42:18, 42:23, 42:24, 43:19, 140:13, 140:15, 142:10, 142:14, 142:21, 162:23, 227:19, 236:6, 236:9 conducted [1] - 169:20 confidential [1] - 237:7 confused [1] - 197:6 confusing [1] - 248:8 confusion [1] - 205:2 congruent [3] - 85:20, 122:12, 123:19 Connecticut [1] - 18:4 connection [3] - 260:21, 260:24, 269:25 connects [1] - 8:20 consciousness [1] - 137:21 consent [5] - 52:2, 212:16, 212:22, 212:24, 213:4 consequence [1] - 60:21	consequences [2] - 58:25, 260:10 consider [10] - 35:7, 36:16, 36:22, 43:12, 44:10, 44:15, 161:20, 251:13, 251:25, 252:2 consideration [1] - 180:21 considered [3] - 121:4, 140:25, 160:18 consistent [4] - 177:7, 177:21, 182:15, 182:23 consonant [1] - 122:21 constantly [1] - 120:22 constitute [1] - 181:14 construction [1] - 129:18 consultant [8] - 131:19, 194:11, 197:18, 200:7, 219:9, 219:13, 219:14, 225:15 consultation [1] - 223:19 consulted [1] - 226:4 consulting [7] - 193:24, 217:3, 226:22, 227:5, 228:11, 228:13, 228:18 contact [2] - 24:6, 253:4 contacted [2] - 21:18, 68:2 contained [1] - 193:12 contains [2] - 180:3, 180:6 contend [2] - 185:18, 186:17 continually [1] - 126:3 continue [1] - 37:16 continued [6] - 1:21, 60:24, 159:3, 159:8, 273:2, 274:2 contract [22] - 124:26, 125:5, 125:18, 127:7, 128:2, 128:8, 128:9, 128:16, 129:17, 153:10, 153:12, 162:2, 162:3, 170:19, 170:22, 171:11, 171:14, 171:17, 172:11, 172:15, 172:19, 274:6	contracts [4] - 125:15, 129:8, 129:22, 172:23 control [4] - 166:10, 248:21, 249:24, 267:2 controlled [2] - 248:21, 250:14 Controller [1] - 264:12 controller [6] - 10:15, 17:23, 160:2, 263:25, 264:13, 264:21 controls [1] - 250:3 conversation [3] - 56:13, 60:2, 175:25 conversations [1] - 174:23 conversion [1] - 95:11 convert [3] - 111:2, 123:22, 209:21 converted [3] - 95:9, 113:18, 122:20 converting [1] - 122:24 convey [1] - 121:24 conveyance [1] - 133:6 conveyed [3] - 59:21, 95:20, 132:25 convoluted [2] - 268:6, 268:16 Cooper [1] - 12:15 coordinates [1] - 10:23 copies [6] - 109:15, 110:10, 110:14, 113:20, 166:7, 239:22 copy [8] - 27:8, 85:3, 85:6, 191:6, 191:14, 199:21, 203:20, 272:23 Corporation [2] - 164:17, 210:14 corporation [4] - 188:22, 249:11, 253:22, 273:24 corporations [2] - 19:11, 19:20 correct [114] - 9:7, 13:14, 13:19, 13:25, 29:24, 35:17, 37:22, 43:3, 43:7, 47:14, 54:3, 56:20, 58:23, 59:9, 60:3, 60:4, 60:9, 63:22, 64:2, 65:4, 65:16, 71:4, 71:7, 71:8, 72:20, 73:3, 73:4, 73:10,
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